



U.S. Department of Justice

United States Attorney
Southern District of New York

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March 7, 2019

VIA ECF

Honorable John G. Koeltl
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: *R.F.M. v. Nielsen*, 18 Civ. 5068 (JGK)

Dear Judge Koeltl:

This Office represents Defendants (the “Government”) in the above-referenced action brought under the Administrative Procedure Act. We write respectfully to provide an update to our February 22, 2019 letter [Dkt. No. 117], responding to Plaintiffs’ February 19, 2019 letter [Dkt. No. 112]. Plaintiffs’ February 19 letter asserts that “SIJS applicants who were remanded to ACS [Administration for Children’s Services] custody before they turned 18 years old are, in fact, still being denied SIJS based on Defendants’ Over-18-Denial Policy.” *Id.* at 2.

USCIS does not have an “Over-18-Denial Policy” for all New York juveniles between the ages of 18-20 seeking SIJ classification. As previously stated, a New York petitioner between the ages of 18 through 20 may qualify for SIJ classification if the court that issued the order had the authority under state law to reach all of the legal conclusions regarding custody required by the definition of SIJ found at 8 U.S.C. 1101(a)(27)(J). For example, SIJ classification may be approved if a petitioner obtains a guardianship order under N.Y. Fam. Ct. Act § 661(b), which extends the Family Court’s authority to approve permanent guardianship for a juvenile who was already the subject of certain child protective or abandonment proceedings that were commenced when he or she was under 18. *See* Defs.’ Corrected Mem. of Law in Opp. to Pls.’ Mot. for Prelim. Inj., Pls.’ Mot. for Class Cert. and Pls.’ Mot. for Leave to Proceed Anonymously [Dkt. No. 88], at 42-43 n.8.

Plaintiffs have identified seven SIJ cases in which the petitioners were in the custody of the New York Administration for Children’s Services and placed in foster care, and in which Plaintiffs allege that USCIS applied an erroneous interpretation of the law. However, as previously stated, in one of these cases, USCIS ultimately granted SIJ classification in a manner that is demonstrably consistent with the agency’s interpretation of the SIJ statute and regulations as set forth in the Government’s briefs. Specifically, in *Matter of A.I.N.*, the family court continued to have jurisdiction over the petitioner’s custody and care, notwithstanding the fact that petitioner was over 18, because the petitioner had been in foster care pursuant to New York law prior to the age of 18; thus, the petitioner was eligible for SIJ status, which USCIS granted after review of all the facts and circumstances. *See Matter of A.I.N.*, ID# 3703854 (AAO Feb. 15, 2019) [Dkt. No. 117-1]. USCIS is reviewing the remaining six cases to ensure that USCIS

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has adhered to the statutory requirements consistent with the application of the law as articulated in *Matter of A.I.N.*, and if necessary, remedying any errors. Specifically, of the six remaining cases, USCIS has not issued a decision in three of the cases and they remain pending. In one case, USCIS issued a decision denying the SIJ petition, but the applicant has requested reconsideration, which USCIS intends to grant. Finally, USCIS issued denials in two of the cases, but it intends to *sua sponte* reopen and reconsider those matters. Accordingly, USCIS seeks to diligently and correctly adjudicate SIJ petitions in accordance with the statutes, regulations, and legal interpretations set forth in its briefing.

We thank the Court for its consideration of this letter and apologize for our delay in submitting it.

Respectfully submitted,

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